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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,798	09/10/2003	Gerhardt Van Drie	Vandri.G-14	5265

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GENE SCOTT; PATENT LAW & VENTURE GROUP  
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EXAMINER
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COOLEY, CHARLES E

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 10/659,798	<b>Applicant(s)</b> DRIE, GERHARDT VAN	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5,6 and 8 is/are rejected.
- 7) ☒ Claim(s) 2,4,7 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12082003</u> . | 6) <input type="checkbox"/> Other: ____  |

## OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimile should be transmitted to (703) 872-9306.

2. As the PTO continues to move towards a fully electronic environment, the office will phase-in its E-Patent Reference program. This program: (1) provides downloading capability of the U.S. patents and U.S. patent application publications cited in Office actions via the E-Patent Reference feature of the Office's PAIR system; and (2) ceases mailing paper copies of U.S. patents and U.S. patent application publications with office actions except for citations made during the international stage of an international application under PCT.

Effective June 2004, paper copies of cited U.S. patents and U.S. patent application publications will cease to be mailed to applicants with Office actions from this Technology Center. Paper copies of foreign patents and non-patent literature will continue to be included with office actions.

The U.S. patents and patent application publications cited in office actions are available for download via the Office's PAIR system. As an alternate source, all U.S.

patents and patent application publications are available on the USPTO web site ([www.uspto.gov](http://www.uspto.gov)), from the Office of Public Records and from commercial sources. Inquiries about the use of the Office's PAIR system should be referred to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197.

Requests to restart a period for response due to a missing U.S. patent or patent application publications will not be granted.

### ***Priority***

3. Acknowledgment is made of applicant's claim for domestic priority under 35 U.S.C. § 119(e).

### ***Information Disclosure Statement***

4. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 8 DEC 2003.

### ***Drawings***

5. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

### ***Specification***

6. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
7. The disclosure is objected to because of the following informalities:
  - a. Page 6, line 14: replace "the mixing" with --The mixing--.  
Appropriate correction is required.
8. The Abstract of the Disclosure is objected to because:
  - a. Line 7: replace "the mixing" with --The mixing--.  
Correction is required. See MPEP § 608.01(b).
9. The title is acceptable.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1, 5, and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Drie (US 6,029,955).

The patent to Drie '955 discloses an apparatus and method for mixing fluid in a tank 12 comprising a beam 40 supported at a balance point on the beam by a means for pivoting 32 attached to a fixed pivot support 30; the beam movable in cyclic tilting motion about the pivoting means such that ends of the beam move vertically in mutually

opposing directions (Fig. 1); the ends of the beam pivotally engaging vertical arms 70 depending downwardly therefrom; each of the arms downwardly terminating with a buoyant mixing plate 80 engaged therewith; the mixing plates positioned for being immersed within the fluid within the tank so that the mixing plates cause fluid mixing as the beam moves in the tilting motion (Fig. 1); and a means 76, 77, 78, 110, 112, 120 for cyclically unbalancing the beam to cause the tilting motion to be cyclic.

12. Claims 1, 3, 5, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuart (US 2,715,099).

The patent to Stuart '099 discloses an apparatus and method for mixing fluid in a tank 10, 11 comprising a beam 21 supported at a balance point on the beam by a means for pivoting 14, 15 attached to a fixed pivot support 12; the beam movable in cyclic tilting motion about the pivoting means such that ends of the beam move vertically in mutually opposing directions (Fig. 1); the ends of the beam pivotally engaging vertical arms 22 depending downwardly therefrom; each of the arms downwardly terminating with a buoyant mixing plate 27, 28 engaged therewith; the mixing plates positioned for being immersed within the fluid within the tank so that the mixing plates cause fluid mixing as the beam moves in the tilting motion (Fig. 1); and a means 16, 17, 18, 19 20 for cyclically unbalancing the beam to cause the tilting motion to be cyclic comprising a linear actuator 19 or 20.

13. Claims 1, 3, 5, 6, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Stuart (US 3,434,699).

The patent to Stuart '699 discloses an apparatus and method for mixing fluid in a tank 10 comprising a beam 24 supported at a balance point on the beam by a means for pivoting 22 attached to a fixed pivot support (Fig. 2); the beam movable in cyclic tilting motion about the pivoting means such that ends of the beam move vertically in mutually opposing directions (Fig. 1); the ends of the beam pivotally engaging vertical arms 40 depending downwardly therefrom; each of the arms downwardly terminating with a buoyant mixing plate 36 (Fig. 5) engaged therewith; the mixing plates positioned for being immersed within the fluid within the tank so that the mixing plates cause fluid mixing as the beam moves in the tilting motion (Fig. 1); and a means 34, 32, 30, 33, 26 for cyclically unbalancing the beam to cause the tilting motion to be cyclic comprising a linear actuator 26 or 33.

***Allowable Subject Matter***

14. Claims 2, 4, 7, and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

15. The following is an Examiner's statement of reasons for the indication of allowable subject matter:

The prior art of record does not teach or fairly suggest the unbalancing means in the form of the recited weight and means for moving the weight or in the form of a pair of liquid reservoirs in communication with a pump.

**Conclusion**

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses reciprocating mixing devices.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Charles E. Cooley", followed by a long horizontal flourish.

Charles E. Cooley  
Primary Examiner  
Art Unit 1723

7 AUG 2004